BEFORE THE APPEALS BOARD FOR THE KANSAS DIVISION OF WORKERS COMPENSATION

LORI SLIFE	R Claimant	
VS.	Claimant)) Dealest No. 400 700
WAIDS) Docket No. 186,700
AND	Respondent	
WINSTEADS & WAIDS CO. IN CARE OF WOODSMALL RISK SERVICE, INC. Insurance Carrier)))
AND		
KANSAS W	ORKERS COMPENSATION FUND)

ORDER

ON July 19, 1994, the application of the respondent for review of an Order entered by Administrative Law Judge Steven J. Howard, dated May 20, 1994, came on for oral argument.

APPEARANCES

The claimant appeared by and through her attorney, Victor Finkelstein of Kansas City, Missouri. The respondent and its insurance carrier appeared by and through their attorney, Dennis L. Horner of Kansas City, Kansas. The Kansas Workers Compensation Fund appeared by and through its attorney, Fred J. Logan, Jr. of Prairie Village, Kansas. There were no other appearances.

RECORD

The record considered on appeal includes the transcript of Preliminary Hearing of March 29, 1994, deposition of Karl W. Keltner taken March 24, 1994, deposition of Wade C. Ferguson taken March 23, 1994, exhibits attached to each transcripts, and all pleadings of record on this claim.

<u>ISSUES</u>

The issues presented on appeal included whether this appeal is timely filed and whether claimant's evidence establishes that her cervical injury arose out of and in the course of her employment.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Appeals Board first finds that this appeal has been filed within the ten (10) days required by K.S.A. 44-551. The Order was first entered in this case on April 4, 1994, following a hearing on March 29, 1994. That Order required respondent to provide treatment through Dr. Andrew Kaufman. Temporary total disability benefits were not an issue. The parties had disagreed about whether Dr. Kaufman should be permitted to treat claimant's cervical complaints as well as upper extremity complaints. As originally written, the Order required respondent to provide treatment with Dr. Kaufman but did not expressly state that treatment of the cervical complaints was to be included. Respondent sought clarification of the Order and a second Order was issued April 18, 1994, indicating that the cervical treatment was intended to be included. The Administrative Law Judge described the second Order as a Nunc Pro Tunc Order. Respondent filed its first Application for Review on April 25, 1994. However, the first Nunc Pro Tunc Order had been misdated and, as a result, it appeared that the Application for Review was out of time. The respondent requested and the Administrative Law Judge entered a second Nunc Pro Tunc which changed the date to April 18, 1994. The Appeals Board considers the first Order described as a Nunc Pro Tunc to be one which, in effect, modifies the original Order. Accordingly, the Application for Review filed within ten (10) days of the first Nunc Pro Tunc is considered timely.

After consideration of the arguments of the parties and review of the record, the Appeals Board concludes that the Administrative Law Judge's Order for medical treatment should be affirmed. The evidence establishes that claimant began experiencing numbness, pain and weakness in her right arm and shoulder in July 1993. She was initially treated for carpal tunnel syndrome and surgical releases were performed by Dr. Storm on both the right and the left wrists in 1993. Claimant returned to work after those surgeries but her symptoms continued to worsen until November 28, 1993, when she woke up with severe pain in her neck. She was thereafter referred to several physicians. She did not initially give a history that related this condition to her work. From her own testimony it appears she was not aware that it was caused by her work activities until she was seen by Dr. Bono. Dr. Bono and Dr. Reintjes both diagnosed herniated disc at C5-6. Dr. Bono attributes the herniation to cumulative trauma. According to claimant, in response to questions by respondent's attorney, Dr. Bono told her it was work related. In the absence of other history to explain the injury, and for purposes of preliminary hearing, the Appeals Board finds that the evidence does indicate it is more probably true than not that the work activities caused, aggravated or accelerated claimant's surgical condition. Accordingly, the Appeals Board finds the decision of the Administrative Law Judge awarding treatment, including treatment for cervical complaints, at the direction of Dr. Andrew Kaufman should be affirmed.

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Order of Administrative Law Judge Steven J. Howard, dated April 18, 1994, as amended May 20, 1994, should be, and the same is, hereby affirmed.

II IS SO ORDERED.			
Dated this day of Oc	s day of October, 1994.		
	BOARD MEMBER		
	BOARD MEMBER		
	BOARD MEMBER		

c: Victor Finkelstein, 1125 Grand Avenue, Suite 1500, Kansas City, MO 64106 Dennis L. Horner, 302 Security Bank Bldg, 707 Minnesota Av., Kansas City, KS 66101 Fred J. Logan, Jr., 3500 W. 75 St., Suite 302, Prairie Village, KS 66208 Steven J. Howard, Administrative Law Judge George Gomez, Director